

STATE OF MICHIGAN
COURT OF APPEALS

LOUISE MCKINNIE and WILLIE LEE
MCKINNIE,

UNPUBLISHED
September 29, 2011

Plaintiffs/Counterdefendants-
Appellants,

v

No. 299143
Saginaw Circuit Court
LC No. 03-048739-NZ

ROY M. BALDWIN and EVELYN L.
BALDWIN,

Defendants-Counterplaintiffs,

and

MICHAEL J. FORSTER,

Appellee.

Before: SERVITTO, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

This dispute over attorney fees arises out of an action to dissolve a partnership agreement between plaintiffs, Louise McKinnie and Willie Lee McKinnie, and defendants, Roy Baldwin and Evelyn Baldwin. Appellee, Michael Forster, represented the McKinnies in the underlying lawsuit that resulted in an award to the McKinnies of \$21,031.80. Foster also successfully defended the McKinnies against the Baldwins' counterclaim. On appeal the McKinnies challenge the trial court's distribution of all the monies awarded to Forster for his work on their behalf in the underlying lawsuit. We affirm.

The McKinnies contend that attorney fees Forster claimed were unreasonable because they exceeded the amount awarded to the McKinnies. The trial court ruled that Forster's fees were reasonable, at least up to the amount the McKinnies were awarded in the underlying litigation. We review for an abuse of discretion the trial court's determination regarding the reasonableness of an attorney fee. In *re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). The court abuses its discretion occurs when its decision is outside the range of reasonable and principled outcomes. *Id.*

When attorney fees sought are based on an hourly rate rather than a contingent fee,¹ a court must first use credible evidence to determine the fee customarily charged in the locality and multiply this by the number of hours reasonably spent on the matter. *Smith v Khouri*, 481 Mich 519, 530-531; 751 NW2d 472 (2008). Once this hourly-rate baseline figure has been obtained, a trial court may adjust its determination of a reasonable fee up or down based on other relevant factors. *Id.* at 531. Relevant factors for determining a reasonable fee include:

(1) the skill . . . and labor involved; (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer; (3) [the hourly-rate baseline fee]; (4) the amount in question and the results achieved; (5) the expense incurred; (6) the time limitation imposed by the client or the circumstances; (7) the nature and length of the professional relationship with the client; (8) the professional standing and experience of the attorney; and (9) whether the fee is fixed or contingent. [In *re Temple Marital Trust*, 278 Mich App at 138 (ordinals omitted).]

Ultimately, the reasonableness of an attorney fee depends on the totality of the circumstances of the case at hand. *Smith*, 481 Mich at 529.

The trial court determined that the baseline fee was \$36,960. The McKinnies argued below that the trial court should adjust this figure to one half of the judgment after costs because of the results achieved. The trial court disagreed. Based on the briefs and the record, the trial court found that the matter was “somewhat complicated because of the extent and nature of the ongoing litigation.” The court noted that the case entailed “a lot of work . . . trying to provide evidence of what was going on” because, in part, “there were not a lot of records kept by the people that were involved.” The trial court also found that there was no understanding between the parties that Forster was working on a contingent fee basis and that the billings statements provided the McKinnies with a general understanding of the fees Forster would be owed.

The trial court did not abuse its discretion. The court had already determined a reasonable fee was significantly less than the baseline. To reduce it even further would require finding that the relevant factors weighed in favor of an additional downward adjustment. However, relevant factors the court reviewed indicated that an attorney fee higher than the baseline would also be reasonable. Under these circumstances, the court did not abuse its discretion because its determination of reasonableness was within the range of reasonable and principled outcomes. *In re Temple Marital Trust*, 278 Mich App at 128, 138.

Finally, although Forster’s argument that the McKinnies’ appeal is vexatious has not been properly presented, MCR 7.216(C)(8), we nonetheless consider the assertion and conclude it is without merit. Because Forster’s fee consumed the McKinnies entire award, it was not

¹ Contingent fees are discussed in *Univ Rehab Alliance, Inc v Farm Bureau General Ins Co of Michigan*, 279 Mich App 691, 699-700; 760 NW2d 574 (2008), and *Augustine v Allstate Ins Co*, ___ Mich App ___, ___ NW2d ___ (Docket No. 296646, issued April 26, 2011), slip op p 9 n 2.

devoid of arguable legal merit to contend that a reasonable attorney fee would be less than the McKinnies' award, i.e., adjusted according to "the results achieved" by the litigation.

We affirm.

/s/ Deborah A. Servitto

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly